

THE HONORABLE CAROL SCHAPIRA

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SEATTLE CITY EMPLOYEES'
RETIREMENT SYSTEM, an agency of the
City of Seattle,

Plaintiff,

v.

EPSILON GLOBAL ACTIVE VALUE FUND
II, LTD., a British Virgin Islands corporation,
EPSILON GLOBAL MASTER FUND II, L.P.,
a limited partnership formed under the laws of
the Cayman Islands, EPSILON
INVESTMENT MANAGEMENT, LLC, a
Delaware limited liability company, EPSILON
GLOBAL ASSET MANAGEMENT LTD., a
corporation formed under the laws of the
Cayman Islands, and STEVEN G.
STEVANOVICH, a resident of Florida,

Defendants.

No. 10-2-10235-3 SEA

DECLARATION OF ANDREW THORP

I, ANDREW THORP, hereby declare as follows:

1. Identity and Competency. I am a partner of the international law firm Harneys
and I practice in the British Virgin Islands office of the firm. I am a graduate of the University
of Nottingham (1994) and Chester College of Law, (1996), and I am licensed and admitted as a

DECLARATION OF ANDREW THORP - 1

Perkins Cole LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

73782.0001/1 E/CAL 17080422 1

1 Solicitor of the Supreme Court of England and Wales (1998) and in the British Virgin Islands
2
3 ("BVI") (2005). I have been a partner of Harneys since 2009.

4 2. BVI Counsel for Epsilon. I am instructed to provide legal advice and counsel to
5
6 Epsilon Investment Management LLC and its affiliates, including Epsilon Global Active Value
7
8 Fund II Ltd ("Epsilon II").

9
10 3. Contact with General Counsel Ed Bergan. I regularly interact with Ed Bergan,
11
12 General Counsel and Chief Compliance Officer of Epsilon Investment Management LLC.

13 4. Plaintiff's Rights and Obligations Under BVI Law. I have read the Declaration of
14
15 Edmund P. Bergan, Jr., dated March 30, 2010, filed in the above captioned action, and I agree
16
17 with it in all respects regarding application of BVI law to this proceeding, to the rights and
18
19 obligations of the investors in Epsilon II, and to the obligations of Epsilon II with respect to its
20
21 investors or members. Epsilon is a creature of BVI law, organized, created, and operating as a
22
23 BVI company pursuant to the BVI Business Companies Act 2004 and regulated pursuant to The
24
25 British Virgin Islands Mutual Funds Act 1996. The controlling document governing the
26
27 Company and its relationship with its shareholders is a statutory contract, the Memorandum of
28
29 Association and Articles of Association ("M and A's") attached as Exhibits 3 and 4 to the
30
31 Bergan Declaration. The document setting forth additional contractual terms between Epsilon
32
33 and its investors is the Offering Memorandum ("OM").

34
35 5. Specifically, under BVI law and the controlling documents, Epsilon is entitled to
36
37 suspend the redemption of shares at any time under certain specified circumstances set forth in
38
39 Paragraph 76 of the Articles of Association and under "Redemption Procedure" in the Offering
40
41 Memorandum. Epsilon elected pursuant to the terms as set out in the M and A's and OM to
42
43 suspend redemption of shares. This election was communicated to investors by letter of 4
44
45 February 2010 prior to the redemption date of 31 March 2010 upon which the Seattle City
46
47 Employees' Retirement System had the right to receive a redemption of its shares. Whilst
48
49 investors, including the Seattle City Employees' Retirement System, pursuant to the terms of the
50
51

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1 OM may receive an audited financial statement and an annual report, this has not been possible
 2 in this instance. As yet, as far as I am aware Epsilon have not yet received from its auditors a
 3 completed audit opinion regarding the 2008 financial statements, and therefore is unable to
 4 provide such information. On this basis Epsilon is not withholding the information; it has not
 5 yet been prepared by Epsilon's outside auditors, PriceWaterhouseCoopers, and therefore Epsilon
 6 is not in a position to convey to its investors.
 7

12 6. It should also be noted that, pursuant to s.100 of The BVI Business Companies
 13 Act 2004, shareholders of a company are entitled, subject to the discretion of the directors, to
 14 inspect only the following limited documents:-
 15

- 16 a. the memorandum and articles
- 17 b. the register of members;
- 18 c. the register of directors; and
- 19 d. minutes of meetings and resolutions of members and of those classes of
 20 members of which he is a member.

21 7. Investors do not have a right, pursuant to the M and A's, the terms of the OM nor
 22 statute to receive the underlying data regarding Epsilon's strategic investment positions which the
 23 Company deems confidential and proprietary. This is further underlined within the terms of the
 24 OM, see page 2, which specifically states that quarterly investment reports will provide details of
 25 fund's activities as the investment manager in his sole discretion shall determine. At page 10 of
 26 the OM, under "Unidentified Investments" it is made clear that prospective investors must rely on
 27 the ability of the Investment Manager in making investments consistent with the Fund's
 28 objectives. *"Shareholders will not have the opportunity to evaluate the relevant economic,*
 29 *financial and other information which will be utilized by the Fund in deciding whether or not to*
 30 *make a particular investment".*
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51

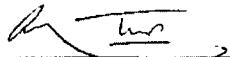
Perkins Cole LLP
 1201 Third Avenue, Suite 4800
 Seattle, WA 98101-3099
 Phone: 206.359.8000
 Fax: 206.359.9000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

8. Under BVI law and the controlling documents, Epsilon is not required to forego a Management Fee during a period when redemptions are suspended and/or audited financial statements are not available.

I declare under penalty of perjury under the laws of the British Virgin Islands that the foregoing is true and correct.

EXECUTED at Tortola, British Virgin Islands, this 30th day of March, 2010.



Andrew Thorp

Perkins Cole LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1
2
3
4
5
6
7
8
9

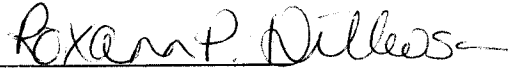
CERTIFICATE OF SERVICE

On the 30th day of March, 2010, I caused to be served upon the following, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

10	Bradley P. Thoreson	<u>X</u>	Via hand delivery
11	Samuel T. Bull	—	Via U.S. Mail, 1st Class,
12	Miriam H. Cho	—	Postage Prepaid
13	Foster Pepper PLLC	—	Via Overnight Delivery
14	1111 Third Avenue, Suite 3400	—	Via Facsimile
15	Seattle, WA 98101	<u>X</u>	Via Email
16	thorb@foster.com		
17	bulls@foster.com		
18	chomi@foster.com		
19			
20			

21
22
23 I certify under penalty of perjury under the laws of the State of Washington that the
24 foregoing is true and correct.

25
26
27 DATED at Seattle, Washington, this 30th day of March, 2010.

28
29
30 
31
32 Roxann P. Ditlevson

33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

Perkins Cole LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000